

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

THE COURTLAND COMPANY, INC., a	)	
West Virginia Business Corporation,	)	
	)	No. 2:19-cv-00894
Plaintiff and Counterdefendant,	)	
	)	<i>Electronically filed</i>
v.	)	
	)	
UNION CARBIDE CORPORATION, a New	)	
York Corporation,	)	
	)	
Defendant and Counterclaimant,	)	

**MOTION TO WITHDRAW APPEARANCE**

NOW COMES, Matthew G. Breneman, Kerri Shimborske-Abel, Brian M. Lucot, pursuant to 83.4 of the Rules of Civil Procedure for the United States District court for the Southern District of West Virginia, and move this Court for leave to withdraw as counsel for Counter-Defendant, The Courtland Company, Inc. (“Counter-Defendant” or “Courtland Company”) in the above-referenced matter. In support of their Motion, the undersigned counsel state as follows:

1. Plaintiff, The Courtland Company, Inc., commenced this action (also referred to as “Courtland II”) alleging various counts against Defendant and Counterclaimant, Union Carbide Corporation (“UCC” or “Counterclaimant”) on or around December 13, 2019. [ECF No. 1].

2. This case is related to three other civil actions pending at Case No. 2:18-cv-01230, Case No. 2:21-cv-00101, and Case No. 2:21-cv-00487 (also referred to as “Courtland I, Courtland III, and Courtland IV”). Courtland Company is represented in all four pending actions by Michael O. Callaghan, Esquire as lead trial counsel along with at least three additional attorneys.

3. UCC filed its Answer, Affirmative Defenses, and Counterclaim to Courtland Company’s Complaint on September 9, 2020. [ECF No. 82].

4. Courtland Company, thru counsel Michael O. Callaghan, Esquire, filed a Rule 12 Motion to Dismiss All Counts of UCC's Counterclaims, *inter alia*, and Memorandum in Support on September 30, 2020. [ECF Nos. 103 and 104, *respectively*].

5. On May 10, 2021, this Honorable Court issued its Memorandum Opinion and Order as to, *inter alia*, Courtland Company's Motion to Dismiss UCC's Counterclaims, whereby the Court dismissed UCC's Counterclaim without prejudice. [ECF No. 250, p. 43].

6. On July 21, 2021, UCC filed a Rule 15 Motion for Leave to File an Amended Answer and Re-Alleged Counterclaims. [ECF No. 271].

7. Courtland Company, thru counsel Michael O. Callaghan, Esquire, again filed a Response in Opposition to UCC's Rule 15 Motion for Leave to File an Amended Answer and Re-Alleged Counterclaims on August 4, 2021. [ECF No. 274].

8. On October 22, 2021, this Honorable Court issued its Memorandum Opinion and Order as to UCC's Rule 15 Motion for Leave to File an Amended Answer and Re-Alleged Counterclaims, whereby the Court denied the Motion as to UCC's Section 9607(a) Counterclaim but granted the motion as to the remaining Counterclaims. [ECF No. 302].

9. On October 22, 2021, UCC's Amended Answer, Affirmative Defenses, and Counterclaim were filed pursuant to the Memorandum Opinion and Order filed that day. [ECF No. 304].

10. At that time, Courtland Company tendered the defense of the UCC Counterclaims to its insurance carrier, Westfield Insurance Company. The undersigned counsel was then engaged by Westfield Insurance Company to represent Courtland Company with respect to the Counterclaims under a reservation of rights.

11. The undersigned counsel entered their appearances on November 18, 2021. [ECF Nos. 316, 317, and 318, *respectively*].

12. Westfield Insurance Company has concluded its coverage investigation and has determined that coverage (defense and/or indemnification) does not apply for reasons that have been provided to Courtland Company's counsel, Michael O. Callaghan, Esquire.

13. Upon being notified of the denial of coverage, the undersigned counsel promptly informed Courtland Company, thru its designated representative, Michael O. Callaghan, Esquire, of their intention to file a motion to withdraw as counsel.

14. Courtland Company will not be prejudiced by the withdrawal of the undersigned counsel because its lead trial counsel, Michael O Callaghan, Esquire, and his team have been representing Courtland Company since the inception of this litigation in 2018 and have been actively involved in all phases of this litigation.

15. Additionally, on February 18, 2022, this Honorable Court entered an Order in response to the parties' Motion to Continue Trial of Related Action and all Related Deadlines. In denying the Motion, the Court noted that, "Since the inception of these matters, Courtland has been predominately represented by Mr. Callaghan, who is undoubtedly intimately familiar with the claims asserted by and against Courtland." [ECF No. 341].

16. Based on the foregoing, Courtland Company would not be prejudiced by the withdrawal of the undersigned counsel as Courtland Company has competent legal counsel who has served as lead trial counsel for all matters related to the four pending Courtland cases and will continue to represent it in this matter through trial.

WHEREFORE, the undersigned, Matthew G. Breneman, Esquire, Kerri Shimborske-Abel, Esquire, and Brian M. Lucot, Esquire respectfully request that this Honorable Court enter an Order discharging them from all duties and responsibilities as counsel for Counter-Defendant, The Courtland Company, Inc. and granting them leave to withdraw as counsel for The Courtland Company, Inc.

Respectfully submitted,

ZIMMER KUNZ, PLLC

/s/ Matthew G. Breneman

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing MOTION TO WITHDRAW APPEARANCE was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service on all counsel of record.

ZIMMER KUNZ, PLLC

/s/ Matthew G. Breneman  
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